

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SMITHKLINE BEECHAM CORPORATION,
d/b/a GLAXOSMITHKLINE,

No. C 07-5702 CW

Plaintiff,

VERDICT FORM

v.

ABBOTT LABORATORIES,

Defendant.

I. ANTITRUST CLAIMS

MONOPOLIZATION CLAIM

A.1. Do you find that GSK has proven a validly defined economic market?

Yes ____ ("Yes" is a finding for GSK.)

No ____ ("No" is a finding for Abbott.)

If you answered "Yes" to this question, then answer Question A.2. If you answered "No" to this question, proceed to Question B.1.

A.2. Do you find that GSK has proved that Abbott had monopoly power in the relevant market?

Yes ____ ("Yes" is a finding for GSK.)

No ____ ("No" is a finding for Abbott.)

Whether you answered "Yes" or "No" to this question, answer Question A.3.

A.3. Do you find that GSK has proved that Abbott engaged in the following types of anticompetitive conduct:

A.3.a. a practical refusal to deal with its competitors?

Yes ____ ("Yes" is a finding for GSK.)

No ____ ("No" is a finding for Abbott.)

1 A.3.b. unlawful bundled discounting?

2 Yes ____ ("Yes" is a finding for GSK.)

3 No ____ ("No" is a finding for Abbott.)

4 If you answered "Yes" to Question A.2., and to Question
5 A.3.a. or A.3.b. or both, proceed to Question A.4.
6 Otherwise, proceed to Question B.1.

7 A.4. Do you find that Abbott has proved that it had a legitimate
8 business reason for its conduct?

9 Yes ____ ("Yes" is a finding for Abbott.)

10 No ____ ("No" is a finding for GSK.)

11 If you answered "Yes" to this question, proceed to
12 Question B.1. If you answered "No" to this question, proceed
13 to Question A.5.

14 A.5. Do you find that GSK suffered injury to its business or
15 property as a result of Abbott's monopolization of the
16 relevant market, that this monopolization was a material
17 cause of GSK's injury and that the injury was of the type
18 that the antitrust laws were intended to prevent?

19 Yes ____ ("Yes" is a finding for GSK.)

20 No ____ ("No" is a finding for Abbott.)

21 Proceed to Question A.6.

22 ATTEMPTED MONOPOLIZATION CLAIM

23 A.6. Did you find in Question A.1. above that GSK has proven a
24 validly defined economic market?

25 Yes ____ ("Yes" is a finding for GSK.)

26 No ____ ("No" is a finding for Abbott.)

27 If you answered "Yes" to this question, then answer
28 Question A.7. If you answered "No" to this question, proceed
to Question B.1.

1 A.7. Do you find that Abbott had a specific intent to acquire
monopoly power in the relevant market?

2 Yes ____ ("Yes" is a finding for GSK.)

3 No ____ ("No" is a finding for Abbott.)

4 If you answered "Yes" to this question, then answer
5 Question A.8. If you answered "No" to this question, proceed
6 to Question A.12.

7 A.8. Do you find that there was a dangerous probability that
Abbott would acquire monopoly power in the relevant market?

8 Yes ____ ("Yes" is a finding for GSK.)

9 No ____ ("No" is a finding for Abbott.)

10 If you answered "Yes" to this question, then answer
11 Question A.9. If you answered "No" to this question, proceed
12 to Question A.12.

13 A.9. Did you find in Question A.3. above that GSK has proved that
14 Abbott engaged in the following types of anticompetitive
conduct:

15 A.9.a. a practical refusal to deal with its competitors?

16 Yes ____ ("Yes" is a finding for GSK.)

17 No ____ ("No" is a finding for Abbott.)

18 A.9.b. unlawful bundled discounting?

19 Yes ____ ("Yes" is a finding for GSK.)

20 No ____ ("No" is a finding for Abbott.)

21 If you answered "Yes" to Question A.9.a. or A.9.b. or
22 both, proceed to Question A.10. Otherwise, proceed to
23 Question B.1.

24 A.10. Did you find in Question A.4 above that Abbott has proved
25 that it had a legitimate business reason for its conduct?

26 Yes ____ ("Yes" is a finding for Abbott.)

27 No ____ ("No" is a finding for GSK.)

If you answered "Yes" to this question, then proceed to Question B.1. If you answered "No" to this question, proceed to Question A.11.

A.11. Do you find that GSK suffered injury to its business or property as a result of Abbott's attempted monopolization of the relevant market, that this attempted monopolization was a material cause of GSK's injury and that the injury was of the type that the antitrust laws were intended to prevent?

Yes _____ ("Yes" is a finding for GSK.)

No _____ ("No" is a finding for Abbott.)

Proceed to Question A.12.

A.12. If you answered "Yes" to Question A.5. or A.11. or both, what amount of damages, if any, do you find GSK has proved it suffered in lost profits from the misconduct you found Abbott to have committed?

\$ _____

Proceed to Question B.1.

II. BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING CLAIM

B.1. Do you find that Abbott committed an act that showed a lack of good faith and fair dealing, injuring GSK's right to receive the benefits that a reasonable party would have been justified in understanding were included in the license agreement?

Yes _____ ("Yes" is a finding for GSK.)

No _____ ("No" is a finding for Abbott.)

If you answered "Yes" to this question, then answer Question B.2. If you answered "No" to this question, proceed to Question C.1.

B.2. Did Abbott engage in grossly negligent conduct when it breached the implied covenant of good faith and fair dealing?

Yes _____ ("Yes" is a finding for GSK.)

No _____ ("No" is a finding for Abbott.)

If you answered "Yes" to this question, then answer Question B.3. If you answered "No" to this question, proceed to Question C.1.

B.3. Do you find that Abbott's breach of the implied covenant of good faith and fair dealing was a proximate cause of the injury to GSK's business?

Yes _____ ("Yes" is a finding for GSK.)

No _____ ("No" is a finding for Abbott.)

If you answered "Yes" to this question, then answer Question B.4. If you answered "No" to this question, proceed to Question C.1.

B.4. If you answered "Yes" to Question B.3., what amount of damages, if any, do you find GSK has proved it suffered in lost profits from Abbott's breach of the implied covenant of good faith and fair dealing? Enter the number below, even if you awarded some or all of these damages in Question A.12. above. (The Court will ensure that GSK is not awarded the same damages more than once.)

\$ _____

If you entered a number in this line, answer Question B.5. Otherwise, proceed to Question C.1.

B.5. How much of the damages you found in Question B.4., if any, were NOT awarded in Question A.12. above?

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Proceed to Question C.1.

III. UNFAIR & DECEPTIVE TRADE PRACTICES CLAIM

C.1. Are any of the following true?

C.1.a. During the negotiation of the Norvir Boosting License, Abbott was considering how to use its control over Norvir to limit competition with Kaletra from competitors' drugs and deliberately withheld this from GSK.

Yes _____ ("Yes" is a finding for GSK.)

No _____ ("No" is a finding for Abbott.)

1 C.1.b. Abbott inequitably asserted its power over Norvir by
2 increasing Norvir's price by 400 percent to disrupt
3 Lexiva's launch or undermine Lexiva's future sales or
4 both.

5 Yes _____ ("Yes" is a finding for GSK.)

6 No _____ ("No" is a finding for Abbott.)

7 C.1.c. Abbott timed the 400 percent Norvir price increase in
8 order to disrupt Lexiva's launch or undermine Lexiva's
9 future sales or both.

10 Yes _____ ("Yes" is a finding for GSK.)

11 No _____ ("No" is a finding for Abbott.)

12 If you answered "Yes" to Question C.1.a., C.1.b., or C.1.c.,
13 or to more than one of them, then answer Question C.2. If
14 you answered "No" to Questions C.1.a., C.1.b., and C.1.c.,
15 please have your presiding juror sign, date and return your
16 verdict.

17 C.2. Do you find that the conduct you found in Question C.1. that
18 Abbott engaged in was a proximate cause of injury to GSK?

19 Yes _____ ("Yes" is a finding for GSK.)

20 No _____ ("No" is a finding for Abbott.)

21 If you answered "Yes" to this question, then answer
22 Question C.3. If you answered "No" to this question, please
23 have your presiding juror sign, date and return your verdict.

24 C.3. If you answered "Yes" to Question C.2, what amount of
25 damages, if any, do you find GSK has proved it suffered in
26 lost profits from the conduct you found in Question C.1?
27 Enter the number below, even if some or all of these damages
28 are the same damages that you awarded in Question A.12. or
B.5. above. (The Court will ensure that GSK is not awarded
the same damages more than once.)

\$ _____

If you entered a number in this line, answer Question C.4.
Otherwise, please have your presiding juror sign, date and
return your verdict.

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C.4. How much of the damages you found in Question C.3., if any, were NOT awarded in Question A.12. or B.5. above?

\$ _____

Please have the presiding juror sign, date and return this form.

Signed: _____ Date: _____
Presiding Juror